

From: SAdams7943@aol.com on 03/31/2004 12:50:38 PM
Subject: Regulation BB - Community Reinvestment Act

March 31, 2004

Docket No. 04-06
Communications Division
Public Information Room, Mailstop 1-5
Office of the Comptroller of the Currency
250 E St. SW,
Washington 20219

Docket No. R-1181
Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington DC 20429

Regulation Comments, Attention: No. 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street NW
Washington DC 20552

Dear Officials of Federal Bank and Thrift Agencies:

The North Carolina Fair Housing Center urges you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. Your proposed changes are contrary to the CRA statute because they will halt the progress made in community reinvestment.

The proposed CRA changes will thwart the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. Instead, the proposed CRA changes would facilitate predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws.

The North Carolina Fair Housing Center vehemently opposes two major elements of the proposed changes: 1) the provision of streamlined and cursory exams for banks with assets between \$250 million and \$500 million; and 2) the establishment of a weak predatory lending compliance standard under CRA.

The North Carolina Fair Housing Center supports the expansion of data collection and reporting for small business and home lending. However, the Center feels that the beneficial impacts of this proposal are outweighed by the damage imposed by the first two proposals. In addition, the Center strongly recommends that the regulatory agencies take this opportunity to update procedures regarding affiliates, subsidiaries and the exportation of bank services and products as it relates to their assessment areas in

their proposal, and take advantage of this opportunity to improve CRA's effectiveness.

Streamlined and Cursory Exams. Under the current CRA regulations, large banks with assets of at least \$250 million are rated by performance evaluations that scrutinize their level of lending, investing, and services to low- and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between \$250 and \$500 million. The proposed changes would reduce the rigor of CRA exams for 1,111 banks that account for more than \$387 billion in assets. Further, this would encourage further small banks to engage in payday lending and charter renting without any opportunity for public comment.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of affordable rental housing needed by increasingly larger numbers of downsized and displaced workers, local government employees and school teachers, in addition to traditionally underserved populations. Likewise, the banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services. Thus, the effectiveness of the Administration's housing and community development programs would be diminished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit needs if they eliminate the investment and service test for a large subset of depository institutions.

Predatory Lending Standard. The proposed CRA changes contain an anti-predatory screen that will actually perpetuate abusive lending. The proposed standard states that loans based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. This is nothing more than a baby step. A proper anti-predatory lending screen will look for and downgrade lenders for the following abuses.

1. High Fees

The borrower should not be charged fees greater than 3% of the loan amount (4% for FHA or VA loans). Points and fees (as defined by HOEPA) that exceed this amount (not including third party fees like appraisals or attorney fees) take more equity from borrowers than the cost or risk of subprime lending can justify.

2. Prepayment Penalties trap borrowers in high-rate loans, which too often leads to foreclosure. The subprime sector should provide borrowers a bridge to conventional financing as soon as the borrower is ready to make the transition, though prepayment penalties are designed to prevent this from happening. Prepayment penalties are hidden, deferred fees that strip significant equity from over half of subprime borrowers. Prepayment penalties of 5% are common. For a \$150,000 loan, this fee is \$7,500, more than the total net wealth built up over a lifetime for the median African American family.

3. Mandatory Arbitration

Increasingly, lenders are placing pre-dispute, mandatory binding arbitration clauses in their loan contracts. These clauses insulate unfair and deceptive practices from effective review and relegate consumers to a forum where they cannot obtain injunctive relief against wrongful practices, proceed on behalf of a class, or obtain punitive damages. Arbitration can also involve costly fees, be required to take place at a distant site, or designate a pro-lender arbitrator.

4. Flipping

Flipping of borrowers occurs through repeated fee-loaded refinancings. One of the worst practices is for lenders to refinance subprime loans over and over, taking out home equity wealth in the form of high fees each time, without providing the borrower with a net tangible benefit. The net tangible benefit test is significant, for example, one lender charged a borrower \$10,000 in fees on an \$11,000 loan and said that the borrower benefitted from the transaction because they reduced the interest rate of the borrower by 1%.

Rigorous fair lending audits and severe penalties on CRA exams for abusive lending and unlawful discrimination are necessary in order to ensure that the new minority homeowners are protected, unfortunately, the proposed predatory lending standard will not provide the necessary protections. In

addition, an anti-predatory standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending, the proposed standard will frustrate CRA's statutory requirement that banks serve low- and moderate-income communities consistent with safety and soundness. For example, several banks have exported payday lending activities into North Carolina to the detriment of our citizens. While banks export their usurious products to our state they do not offer depository or other beneficial products to our communities and the harm they do to our communities goes unchecked and unregulated.

Enhanced data disclosure. The federal agencies propose that they will publicly report the specific census tract location of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods with small business loans. Also the regulators propose separately reporting purchases from loan originations on CRA exams and separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

federal agencies must utilize the data enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data on CRA exams, but must use the new data in weighing the relationship on CRA exams of high cost loans as compared to prime loans and to assign less weight for purchased loans as compared to loan originations.

Missed Opportunity to Update Exam Procedures: The agencies need to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not serving low- and moderate-income borrowers and excluding affiliates engaged in predatory lending. The game playing with affiliates will end only if the federal agencies require that all affiliates be included on exams. The proposed changes need to update assessment areas to include geographical areas beyond bank branches. Many banks make considerable portions of their loans beyond their branches; this non-branch lending activity must be scrutinized by CRA exams.

The proposed changes to CRA will directly undercut minority homeownership and immigrant access to jobs and banking services. The proposals regarding streamlined exams and the anti-predatory lending standard threaten CRA's statutory purpose of the safe and sound provision of credit and deposit services to all communities. The proposed data enhancements can be much more meaningful if the agencies update procedures regarding assessment areas, affiliates, and the treatment of high cost loans and purchases on CRA exams. CRA is simply a law that makes capitalism work for all Americans. CRA is too vital to be gutted by harmful regulatory changes and neglect. Thank you for your attention to this critical matter.

Sincerely,

Stella J. Adams
NC Fair Housing Center

Cc:

National Community Reinvestment Coalition